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HOW TO CREATE A WORKPLACE FREE OF SEXUAL HARASSMENT



SF Committee on the Status of Women

Employee & Employer Handbook on Sexual Harassment

REF
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San Francisco Commission On
The Status of Women
1170 Market St. Sixth Flr.
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ACKNOWLEDGEMENTS

This brochure was prepared by the Sexual Harassment Committee, chaired by Vickie Driver, of the San Francisco Commission on the Status of Women in the Summer of 1985. The Commission is chaired by Isabel Huie. The principal authors of this brochure are Isabel Huie, Isabel T. Yrigoyen, Ann G. Yee and Pat Warner. Graphic design and typesetting by Elephant Graphics. Photographs by Stewart H. Bloom.

The authors wish to acknowledge Stewart Bloom, Trisha Brinkman, Barbara Felton, Jacquie Hale, Steve Owyang, Drucilla Stender Ramey, Barry M. Shapiro, Barbara Squires, and Carmen Smith for invaluable editorial assistance. Special thanks to Gisele Albrecht Araujo and Tina Shum for translation services. This brochure is available in Spanish and Cantonese.

If you would like more copies of the brochure or information on the subject of sexual harassment, please call (415) 558-3653/ TDD (415) 558-4901

Revised Edition - 1986

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Printing of this brochure was funded in part by:
Chevron, U.S.A.

Friends of the Commission On the Status of Women



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How to create a
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SEXUAL HARASSMENT

- Sexual harassment is an exercise of power used to diminish a woman's worth*, to discount her work capabilities, and to view her as a sex object.
- Sexual harassment is any *unwanted* sexual attention a woman experiences on the job, ranging from leering, pinching, patting, and verbal comments to demands or more subtle pressure to engage in sexual activity. It may take the form of pin-up pictures or violent sexual assault.
- The sexual harasser may be the woman's employer, supervisor, or co-worker, and under some statutes, clients, customers, or vendors.
- In addition to the anxiety caused by unwanted sexual demands, an employee may be concerned that the harasser's behavior may lead her to suffer reprisals such as poor work assignments, sabotaging of her work, sarcasm, rejection, isolation, unsatisfactory job evaluations, demotions, transfers, and/or denial of raises, benefits, or promotions, and may result in dismissal and/or a poor job reference.
- Ignoring sexual harassment is not an advisable strategy. The harassment may escalate.

*The use of the feminine in this pamphlet shall include the masculine.

*See legal definition of sexual harassment (page 6).



LEGAL DEFINITION OF SEXUAL HARASSMENT

On September 23, 1980, the Federal Equal Employment Opportunity Commission adopted the final guidelines on sexual harassment. Harassment on the basis of sex is a violation of Sec. 703 of Title VII of the Civil Rights Act of 1964 (§1604.11).

Under Title VII, "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment..."

The determination of the legality of a particular action will be a factual determination on a case by case basis. Applying general Title VII principles, "...an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence...."

"...With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action...."

"...An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer knows or should have known of the conduct and fails to take immediate and appropriate corrective action...."



HAVE YOU BEEN SEXUALLY HARASSED? ASK YOURSELF THESE QUESTIONS

***(A harasser may be a co-worker,
supervisor or boss)***

- Do you receive unwanted sexual comments, innuendos or gestures?
- Are you being pinched, patted, touched without your consent?
- Are you offered promises of a promotion if you perform a sexual favor?
- Are you threatened when you don't respond the way your harasser wants you to?
- Are you considered humorless because you don't laugh at sexual jokes?
- Do you receive explicit requests to disrobe?
- Are you required to wear sexually revealing or provocative uniforms in order to keep your job?
- Are you called "baby," "sexy," "honey," etc., and feel uncomfortable?
- Do you receive unwelcome late night telephone calls at home or at work?
- Are you exposed to sexually suggestive pictures or pin-ups near your work area?
- If you have complained about being sexually harassed recently to your boss, have you been transferred to another location or otherwise retaliated against?
- Are you experiencing any notable changes in your work environment due to your refusal to comply with the harasser's demands?
- Has your refusal to comply with the sexual harasser's demands resulted in racist remarks or discrimination based on race?

SEXUAL HARASSMENT: YOUR FEELINGS ARE IMPORTANT

1. It's okay to feel whatever you are feeling. Many women feel ashamed or humiliated as a result of sexual harassment.
2. Trust your intuition. If you are being sexually harassed, the first step is to take yourself seriously. Remember, *you do have options*.
3. It's okay to feel angry. Use your anger constructively to develop a strategy to help remedy your situation.
4. *Take one step at a time*. It's easy to feel overwhelmed.
5. If you are scared, frightened or weary of your harasser's possible actions, take those feelings seriously. Do not ignore your feelings.
6. If you feel threatened, you probably need to take action. After all, the action you take may help you keep your job and end your emotional stress.
7. If you are feeling emotionally distressed, you need to talk about your feelings with someone you trust. Talking to someone will help you because you need the emotional support and validation to get through the situation, as well as feedback. Your friend's suggestions might help you figure out what options you have and what you need to do for yourself.
8. You can also talk to a trained counselor through the Commission on the Status of Women's **SEXUAL HARASSMENT HELPLINE**. Counselors are trained lay-people who want to answer any questions you may have (see Resources Section).

**YOU HAVE THE RIGHT TO WORK IN
AN ENVIRONMENT FREE OF SEXUAL HARASSMENT.**

THE SEXUAL HARASSMENT HELPLINE

Sexual harassment is a complex and draining experience. Many victims feel helpless and somehow to blame. Feelings of shame, disbelief, violation and anger may also accompany the experience. With the Sexual Harassment Helpline's support, some of the difficulty is eased.

We often hear questions like "Did I invite it?" "Will I be fired if I complain?" "Will I be subjected to more abuse if I take action?"

The Sexual Harassment Helpline can help you with these and other questions. We will let you know what you can do:

- at work
- through your union
- with other women who have suffered harassment
- at local, state and federal fair employment agencies
- in the courts

Sexual Harassment is AGAINST THE LAW.

Yet 88% of women workers surveyed by *Redbook* Magazine said they had suffered sexual harassment on the job.

You may be sexually harassed.

You may need someone to listen and help.

Now there is the

SEXUAL HARASSMENT HELPLINE.

CALL 863-7444.

THE FIRST STEP.



ACTION STEPS WOMEN HAVE TAKEN AGAINST SEXUAL HARASSMENT

1. AT THE FIRST SIGN OF SEXUAL HARASSMENT YOU SHOULD:

- Document incidents with dates, places, times, names and quotes. Indicate whether there were any witnesses.
- Describe all physical or emotional stress which you experienced as a result of the harassment.

2. CONFIDE IN TRUSTWORTHY CO-WORKERS:

- Talk with co-workers. They may be supportive, and may have experienced sexual harassment as well—perhaps from the same harasser. (A witness is extremely important when filing a complaint.)
- Ask the witness to write a statement on your behalf.

3. TALK TO THE HARASSER:

- Clearly and firmly, tell the harasser you are not interested in any sexual offers or listening to any more sexual remarks, and that his behavior must stop immediately.
- Let him know that you will take further action if the behavior does not stop.
- If you cannot talk to the harasser, write him a letter and hand it to him in the presence of a witness.
- Or, if you have talked directly to him, follow up with a memo summarizing the conversation. Hand-deliver the memo to the harasser with a witness present, if possible. Keep a copy for your files.

4. TALK TO THE HARASSER'S SUPERVISOR:

- If the harassment continues, immediately report it to your supervisor, and tell him/her of your actions. This will indicate that you have tried to stop the harassment by yourself. However, the law does not **require** that you take such action.

5. TAKE YOUR COMPLAINT TO THE APPROPRIATE MANAGER:

- If your supervisor takes no action on your behalf, take it to the next management level. Find out whether your company has a Sexual Harassment Counselor, an Equal Employment Opportunity Officer or an Affirmative Action Officer. Give the appropriate manager your documentation. **Take it to the top.**

- Indicate all attempts you have made to stop the harassment. Give the appropriate manager the facts. Have all the incidents of harassment **documented**; show him/her any memos written to the harasser; bring in a co-worker to make a statement on your behalf. Write down the names of all supervisors you have talked to, and what their actions were. **ALWAYS include NAMES, DATES, and TIMES.**

6. FILE A COMPLAINT:

- It is advisable to first inform your employer of sexual harassment before filing a formal complaint outside your company, giving it an opportunity to remedy the situation.*
- If your employer does not take any action to stop the harassment, file a complaint with one of the government agencies listed in the Resources section.
- You may also file a civil lawsuit in state or federal court (see Resources section for legal assistance).

*Sexual harassment complainants have lost in court because their employer was not given the opportunity to remedy the situation.

Such prior notification is not, however, always required.



HOW CAN YOU PROTECT YOURSELF AGAINST SEXUAL HARASSMENT CHARGES?

- Know the laws: Title VII of the Civil Rights Act of 1964; the Fair Employment and Housing Act; San Francisco's Ordinance on Sexual Harassment
- Know what constitutes sexual harassment
- Establish a sexual harassment policy
- Consider your employees' suggestions when developing the policy
- Publicize and provide employee and supervisory training concerning sexual harassment
- Establish standardized dress codes for both men and women — without creating sex stereotypes

Be aware! You may be responsible for the actions of all your supervisors, employees, clients, customers and vendors who may engage in sexual harassment.

REMEMBER: AS AN EMPLOYER YOU ARE LIABLE

You are responsible for maintaining a workplace free of sexual harassment.



A SAMPLE SEXUAL HARASSMENT POLICY

Name of Company recognizes and reaffirms its policy of providing equal employment opportunity to all qualified persons, and reaffirms its commitment that there shall be no discrimination against qualified applicants or employees on the basis of race, sex, color, national origin, religion, age, disability, or veteran's status.

It is also the policy of *Name of Company* to provide a work environment free from sexual harassment. Sexual harassment includes, but is not limited to:

1. Making unsolicited and unwelcome written, verbal, physical and or visual contact with sexual overtones. (Written examples: suggestive or obscene letters, notes, invitations. Verbal examples: derogatory comments, slurs, jokes, epithets. Physical examples: assault, touching, impeding or blocking movement. Visual examples: leering, gestures, display of sexually suggestive objects or pictures, cartoons, posters or magazines.)
2. Continuing to express sexual interest after being informed that the interest is unwelcome. (Reciprocal attraction is not considered sexual harassment.)
3. Making reprisals, threats of reprisal, or implied threats of reprisal following a negative response. For example, either implying or actually withholding support for an appointment, promotion, or change of assignment, or suggesting that a poor performance report will be given.
4. Engaging in implicit or explicit coercive sexual behavior which is used to control, influence, or affect the career, salary, and/or work environment of another employee.
5. Offering favors or employment benefits, such as promotions, favorable performance evaluations, favorable assigned duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.*

This policy applies to all phases of the employment relationship, including recruiting, testing, hiring, upgrading, promotion/demotion, transfer, layoff, termination, rates of pay, benefits and selection for training.

Moreover, it is the stated policy of *Name of Company* to prevent and prohibit misconduct on the job, including sexual harassment or any other type of employee harassment by co-workers, subordinate employees, or supervisors. Any employee found to have acted in violation of the foregoing policies shall be subject to appropriate disciplinary action, including warnings, reprimand, suspension and/or discharge.

* #1 Through #5 section of this sample policy was taken from *Sexual Harassment: Managing Ambiguity and Conflict*, by Barry M. Shapiro.

foregoing policies shall be subject to appropriate disciplinary action, including warnings, reprimand, suspension, and/or discharge.

Title of person being appointed is hereby designated as *Name of Company's Sexual Harassment Counselor*. All complaints of sexual harassment shall be directed to the *Sexual Harassment Counselor* and shall be handled confidentially to the maximum extent possible. The *Sexual Harassment Counselor* has full responsibility to receive, investigate and resolve complaints involving violations of the policies stated herein, and to recommend to management the imposition of appropriate sanctions against violators.

Name of Company will also establish yearly training sessions for all supervisors and managers, training them how to handle sexual harassment complaints, as well as conducting separate training sessions for subordinate employees concerning their rights under Title VII of the Civil Rights Act of 1964.

A policy statement should be issued by the Chief Executive and should be distributed to all management and employees, and should be posted in areas where all employees will have the opportunity to freely review it.

* #1 through #5 section of this sample policy was taken from *Sexual Harassment: Managing Ambiguity and Conflict*, by Barry M. Shapiro



LIST OF SEXUAL HARRASSMENT CASES WITH VICTORIES FOR COMPLAINANTS

Compiled by Carla B. Oakley, representative of the Bay Area Sexual Harrassment Clinic,
1370 Mission St., 3rd Floor, S.F., CA

1. Department of Fair Employment and Housing v. Bee Hive Answering Service, a Partnership, and Bill Graham
Rebecca Mae Dowling, complainant
Case No. 84-16

Complainant was originally hired as general manager of the answering service part of the business. When the Defendant Graham became a 49% partner in the business, she became his subordinate. Graham made sexual advances and comments toward complainant, including unwanted touching, explicit comments and numerous invitations to dinner and his hotel. When Complainant refused Graham's advances, he retaliated with additional hours and duties she had not been hired for. She was eventually fired. \$35,000 compensatory, \$50,000 punitive, \$1,207 lost wages.

2. Department of Fair Employment and Housing v. Hart and Starkey, Inc., dba Shakey's Pizza Parlor and Garry Hart, individual
Michele Perez, Sheryl Ann Reeder, Diana May Shaw-Watson, Gloria Shaw, complainants
Case No. 84-17

Women working in two pizza parlors won awards of \$30,000 to \$35,000 a piece in compensatory damages and \$10,000 in punitive damages because their boss made continuous sexual comments and gestures. His conduct included looking down one's blouse, unbuttoning her blouse, and touching their buttocks and breasts.

3. Department of Fair Employment and Housing v. Jack's Restaurant and Jack Schat
Darilynn Johnson, complainant
Case No. 84-08

Complainant was a waitress. Her employer made sexually explicit comments to her and physically harrassed her by patting her on the buttocks, grabbing her arm or blocking her path when she was walking with plates of food. He also asked her out several times. Termination was involuntary since caused by oppressive, intolerable working conditions. It was constructive discharge. \$20,000 compensatory damages, \$40,000 punitive damages.

4. Department of Fair Employment and Housing v. Fresno Hilton Hotel
Clara Burns, complainant
Case No. 84-03

Complainant was a "line" or short order cook with 15-20 years of experience. A Sous Chef made sexual comments and advances toward her virtually every day for nine months. The complainant rejected each of the advances, and in retaliation was given several additional duties, many of which were never typically given to a line cook. The Sous Chef agreed to get rid of the extra duties in exchange for sexual favors. Company was liable since it was a supervisor of defendant who was the harrasser. \$15,000 compensatory damages, \$20,000 punitive damages.

5. Department of Fair Employment and Housing v. Donald Shriver, Inc.
Michelle Marie Ehlers, complainant
Case No. 84-07

Complainant was a day bartender at Bahia Lodge. Her supervisor continually made sexual advances and comments; he described his lovemaking prowess, and eventually said she "had to play" if she "wanted pay." \$7,500 compensatory damages, \$20,000 punitive damages.

6. Department of Fair Employment and Housing v. La Victoria Tortilleria, Inc., La Victoria Tortilleria, and Juan Mora Ramona Carrillo, complainant
Case No. 85-04

Complainant worked in a factory and restaurant. After being subjected to sexual comments by the owner's son, who was also a vice president, she sued and was awarded \$40,000 compensatory damages, \$60,000 punitive damages.

7. Miller v. Bank of America, 600 F.2d 211 (9th Cir. 1979)

The Court held that the Bank, as employer, could be liable for the actions of a supervisor who fired a woman employee after she refused his demand for sexual favors, even though the Bank had a policy against such supervisory behavior.

8. Peralta Community College Dist. v. Fair Employment and Housing Commission, 226 Cal. Rptr. 794, 181 Cal. App. 3d 1065

The Court upheld an award to an employee who had been fired for refusing sexual advances of a supervisor.

HOW TO HANDLE A COMPLAINT

At the first sign of sexual harassment:

- When an employee comes to you, even if you are not her immediate supervisor, immediately document the complaint.
- Document the complaint with dates, times, places, names, and quotes.
- Give the information to the appropriate manager, Sexual Harassment Counselor or EEO Officer.
- Establish a grievance procedure if there isn't one.

Investigate the complaint:

- The appropriate manager must meet with the alleged harasser. Document the response. Give him a warning and tell him that harassment of any kind will not be tolerated, and could expose the employer and the harasser to legal liability.

Resolve the complaint:

- If the harassment does not stop, the Sexual Harassment Counselor, the EEO officer or appropriate manager should hold a meeting with the harasser, with the purpose of resolving the complaint.

Final Action:

- If the appropriate manager determines sexual harassment has occurred, the company *must* take immediate, appropriate corrective action in the following forms: an order to STOP, a warning that future violations will be punished, a verbal or written reprimand, and/or suspension or discharge.

Be aware that:

- Employees have the right to file a charge of discrimination with local, state and or federal government agencies, or to file a civil lawsuit
- It is to the employer's advantage to handle the complaint internally before it further escalates into a formal proceeding.
- It is also important for the employer to follow up after the complaint has been handled to insure that the harassment has stopped and there are no actions taken against the complainant.

SEXUAL HARASSMENT RESOURCES

PEER COUNSELING, ADVOCACY OR EMOTIONAL SUPPORT:

THE SEXUAL HARASSMENT HELPLINE (863-7444) wants to help you. Helpline counselors have been trained to listen and help you explore your options. Counselors are only trained to deal with sexual harassment at the workplace. All calls are held confidential. The HELPLINE is a service of the San Francisco Commission on the Status of Women.

BAY AREA SEXUAL HARASSMENT CLINIC (649-1008) Walk-in clinic for women, open every Wednesday evening from 6:30 to 8:30 p.m. Trained peer counselors are able to counsel women who have been harassed at the workplace, school, or in their neighborhoods. They also provide legal advice, advocacy and support. The Clinic is co-sponsored by the National Lawyers Guild and Women Organized Against Sexual Harassment (WOASH). The CLINIC is located at 3130 Shattuck Avenue, Berkeley California.

GOVERNMENT RESOURCES:

San Francisco Commission on the Status of Women (City) 1095 Market Street, Room 409 San Francisco, CA 94103	558-3653
San Francisco Human Rights Commission (City) 1095 Market Street, Room 501 San Francisco, CA 94103	558-4901
Department of Fair Employment and Housing (State) 30 Van Ness Avenue San Francisco, CA 94102	557-2005
Equal Employment Opportunity Commission (Federal) San Francisco District Office 10 United Nations Plaza, Fourth Floor San Francisco, CA 94102	556-0260

PRIVATE LEGAL RESOURCES:

American Civil Liberties Union 1663 Mission Street San Francisco, CA 94103	621-2488
Bar Association of San Francisco Lawyer Referral Service 220 Bush Street, 21st Floor San Francisco, CA 94104	391-6102

Cameron House/Asian Women's Legal Assistance 920 Sacramento San Francisco, CA 94108	781-0408
Employment Law Center, Legal Aid Society of San Francisco 1663 Mission St., Suite 400 San Francisco, CA 94103	864-8848
Equal Rights Advocates 1370 Mission Street San Francisco, CA 94103	621-0505
Gay Legal Referral Service 890 Hayes Street San Francisco, CA 94117	621-3900
Lawyers Club of San Francisco Attorney Reference Panel 870 Market Street, #1115 San Francisco, CA 94102	433-2133
Lawyers Committee for Urban Affairs 625 Market Street San Francisco, CA 94114	543-9444
Lesbian Rights Project 1370 Mission Street, 4th Floor San Francisco, CA 94103	621-0675
National Association for the Advancement of Colored People (NAACP) 635-A Divisadero Street San Francisco, CA 94117	931-3243

LAWS AND REGULATIONS GOVERNING SEXUAL HARASSMENT

1. Title VII of the Civil Rights Act of 1964, as amended, 42 u.s.c. §2000e, et seq.
2. EEOC Regulations Federal Register V. 45, No. 219, Monday, November 10, 1980, Rules and Regulations (Final Interpretive Guidelines), §1604.11 Sexual Harassment.
3. California Government Code, §12490 Fair Employment and Housing Commission Regulations; California Administrative Code, Title 2, §7287.6 (b).
4. State Personnel Board-Sexual Harassment Policy (Policy Memo)
5. California Government Code, State Civil Service Provisions, §19572, 19682, 19702.
6. California Education Code, 212.5 Sexual Harassment
7. San Francisco City and County Administrative Code, §16.9-25, Ordinance No. 213-86.
8. On June 19, 1986 the U.S. Supreme held that sexual harassment is a form of discrimination as defined in the Civil Rights Act of 1964 and the EEOC Guidelines shown above.



RECENT CALIFORNIA LAWS

1. **Fair Employment Practices:** amends Sections 12490, 12970, 19572, 19682, and 19702 of the Government Code. Strengthens protections for victims of sexual harassment in state civil service employment. Specifies the relief available through the State Personnel Board (SPB) for state civil service employee victims of discrimination paralleling that available under Fair Employment Housing Administration (DFEH) for private employees. Provides access to the (DFEH) administrative process for private employees in establishments with fewer than five employees.
2. **Sexual Harassment in Education:** amends Section 230, and adds Section 212.5 to the Education Code. Revises existing law by prohibiting sexual harassment in any program or activity within the jurisdiction of Title IX. This revision of the present law explicitly states that the prohibition against sex discrimination in state educational institutions includes sexual harassment.
3. **Unemployment:** Adds Section 1256.7 to the Unemployment Insurance Code. Requires that an individual be deemed to have left his or her employment with good cause for unemployment compensation benefits qualification if she or he left for reasons of “sexual harassment.”

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PLEASE NOTE

This guide is meant as a general reference on the issues of sexual harassment. It is not a definitive legal reference. Each individual case is different. Your particular situation may need the expertise of one of the organizations listed in the RESOURCES section of this publication or of an attorney. You are encouraged to use these and other resources.

